

1 MORGAN, LEWIS & BOCKIUS LLP
John S. Battenfeld, Bar No. 119513
2 john.battenfeld@morganlewis.com
Max Fischer, Bar No. 226003
3 max.fischer@morganlewis.com
Brian D. Fahy, Bar No. 266750
4 brian.fahy@morganlewis.com
300 South Grand Avenue
5 Twenty-Second Floor
Los Angeles, CA 90071-3132
6 Tel: +1.213.612.2500
Fax: +1.213.612.2501
7

8 MORGAN, LEWIS & BOCKIUS LLP
Amy A. McGeever, Bar No. 296758
amy.mcgeeve@morganlewis.com
9 One Market, Spear Tower
San Francisco, CA 94105-1596
10 Tel: +1.415.442.1000
Fax: +1.415.442.1001
11

12 Attorneys for Defendant
Amazon Logistics, Inc., incorrectly sued as
13 AMAZON.COM, LLC

14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16

17 JASMINE MILLER, individually and on
behalf of all others similarly situated,

18 Plaintiff,

19 vs.

20 AMAZON.COM, LLC, a Delaware Limited
Liability Company; and DOES 1 through 500,
21 inclusive,

22 Defendants.
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Case No. 3:17-cv-03488-MMC

**ADMINISTRATIVE MOTION TO
CONSIDER WHETHER CASES
SHOULD BE RELATED; [PROPOSED]
ORDER**

*[Declaration of Brian D. Fahy Filed
Concurrently Herewith]*

[N.D. Cal. L.R. 3-12, 7-11]

Pursuant to Civil L.R. 3-12(b), Defendant Amazon.com, LLC (“Amazon”) hereby submits this Administrative Motion to Consider Whether Cases Should be Related.

I. PROCEDURAL AND FACTUAL BACKGROUND

A. *Jasmine Miller v. Amazon.com, LLC*; Case No. 3:17-cv-03488-MMC

On April 11, 2017, Plaintiff Jasmine Miller (“Miller” or “Plaintiff”), a former employee of A-1 Express, a third-party Delivery Service Provider (“DSP”) that provides delivery services to Amazon customers in the “last mile” space, filed a putative class action complaint against Amazon in Alameda County Superior Court. The lawsuit alleged that Amazon was her joint employer and on that basis, asserted a variety of wage and hour claims, including failure to pay overtime and minimum wages, failure to provide meal and rest breaks, failure to reimburse business expenses, failure to pay wages to separated employees, failure to provide accurate wage statements, and unfair competition. On May 10, 2017, Plaintiff filed her First Amended Complaint (“FAC”), which added a claim for violation of Labor Code section 2810. In her FAC, Miller sought to represent an expansive statewide class comprised of:

All current and/or former hourly (non-exempt) employees of AMAZON and DOES 1 through 500, inclusive (“Joint Employer Defendants”), including the employees of any subcontractor of AMAZON, who (1) worked at any time from four years prior to the date of the commencement of this action to the date of commencement of trial (the proposed “Class Period”); (2) held the positions of “messenger,” “courier,” “delivery driver,” and/or other similar designation(s) (“Delivery Drivers”); and (3) were assigned to deliver local warehouse goods of AMAZON and/or DOES 1 through 500 within the State of California, as shown by the Joint Employer Defendants’ employment records.

Miller, Dkt. # 1-1, ¶ 1. On June 15, 2017, Amazon timely removed the action to this Court under CAFA. *See* Dkt. #1. *Miller* is pending before Senior District Judge Chesney.

On January 1, 2018, Plaintiff filed her Second Amended Complaint (“SAC”) adding limited carve-outs to the expansive class, based on certain pending litigation against other DSPs. *See* Dkt. # 30. Amazon subsequently moved to dismiss and strike Plaintiff’s SAC on various grounds. On March 29, 2018, Judge Chesney issued an Order Granting in Part and Denying in Part Defendant’s Motion to Dismiss, finding the SAC contained insufficient factual support for Plaintiff’s claims and denying without prejudice Defendant’s Motion to Strike. *See* Dkt. # 31.

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1 On April 27, 2018, Plaintiff filed her Third Amended Complaint (“TAC”) wherein she
2 defined the putative class as follows:

3 All current and/or former hourly (non-exempt) joint employees of AMAZON
4 (“Joint Employer Defendants”), who (1) worked at any time from four years
5 prior to the date of the commencement of this action to the date of
6 commencement of trial (the proposed “Class Period”); (2) were subject to
7 Amazon’s “Delivery Associate Participant Guide” [Attached as Exhibits 3 & 4
and incorporated herein]; and (3) were assigned to deliver local warehouse
goods of AMAZON, as shown by the AMAZON’s delivery records.

8 *See* Dkt. # 47, ¶ 1. The TAC also included limited carve-outs for employees of certain DSPs in
9 other ongoing litigation, including employees of NEA Delivery, LLC. *See id.*

10 On April 29, 2018, Amazon filed a motion to dismiss and strike Plaintiff’s TAC, asserting
11 that Plaintiff had failed to cure the deficiencies in her Complaint and that the expansive class
12 allegations should be stricken. Dkt. # 49. On December 6, 2018, Judge Chesney issued her
13 Order Granting in Part and Denying in Part the Motion. *See* Dkt. # 64. The Order dismissed with
14 prejudice portions of Plaintiff’s sixth, seventh, and eighth causes of action. *See id.* It also granted
15 Amazon’s Motion to Strike the class allegations (with leave to amend) for failure to plead
16 commonality, finding them to be “conclusory in nature and devoid of supporting facts.” *See id.*

17 Following the Court’s December 6, 2018 Order, the Parties have since engaged in further
18 pleading and motion practice concerning Plaintiff’s attempt to file a Fourth Amended Complaint.
19 On March 19, 2019, the parties filed a Joint Stipulation to Withdraw the Fourth Amended
20 Complaint, Stay the Case, and Continue the Case Management Conference and Related Deadlines
21 by Six Months. *See* Dkt. #77. On March 21, 2019, the Court granted the stipulation. *See* Dkt.
22 #78. Under the stipulation, a Fourth Amended Complaint can be filed at a later date.

23 **B. Yolanda Champion v. Amazon.com LLC. et al.; Case No. 3:18-cv-05222-EMC**

24 On August 24, 2018, Plaintiff Yolanda Champion (“Champion”) filed a putative class
25 action against Defendants Amazon.com, LLC, NEA Delivery, LLC, and Does 1 through 100,
26 inclusive, in the Northern District of California. *See Champion* Dkt. #1. Champion’s complaint
27 pled a vague and conclusory class definition of: “[a]ll persons hired directly by Amazon and/or
28 staffing agencies and/or any other third parties or were designated as independent contractors,

1 who worked as “delivery drivers” and/or with similar job titles or duties in California...” during
2 the four years prior to the filing of Champion’s complaint. *Champion* Dkt. #1, ¶¶12-13.
3 Champion also asserts a putative FLSA claim, which defines the putative collective action as
4 follows: “All Amazon Delivery Driver Class members who worked in the United States from
5 September 27, 2013 through the present.” *See id.* Following the same joint employer theories of
6 liability and attempt to base a class action on the employment practices of numerous delivery
7 service provider employers alleged in *Miller*, Champion asserts similar claims for failure to pay
8 wages, failure to provide meal and rest breaks, failure to provide accurate wage statements,
9 failure to pay all final wages, and unfair competition. *See id.*, ¶¶ 46-137. *Champion* was
10 assigned to, and is currently pending before, the Honorable District Judge Edward M. Chen.¹

11 Following the filing of the *Champion* complaint, counsel for the Parties have engaged in a
12 series of meet and confer conversations to attempt to clarify the scope of the vague and
13 ambiguous class definition, in light of other pending litigation, including *Miller*. *See* Declaration
14 of Brian D. Fahy (“Fahy Decl.”) at ¶ 3. Champion’s counsel have declined to limit the scope of
15 the *Champion* action to employees of her employer, NEA, or stay or dismiss the case due to other
16 pending actions that assert similar wage and hour claims on behalf of NEA delivery drivers in
17 California.² *See id.* Instead, Plaintiff’s counsel in *Champion* have confirmed that Champion
18 seeks to certify a class of all drivers of all DSPs in California. *See id.*, ¶ 4. Based on these
19 communications, it is now apparent that the class sought to be certified in *Champion* is
20 substantially similar to the “all DSP” class alleged in *Miller*, which this Court has addressed and
21 stricken in its order dated December 6, 2018.

22 On April 8 and 9, 2019, counsel for Amazon met and conferred with Champion’s counsel
23 per L.R. 7-11 and requested that Champion stipulate to relate her action to the *Miller* action.
24 Counsel for Plaintiff Champion have to date not agreed to do so. *See* Fahy Decl., ¶ 5.

25 ¹ The defendants in *Champion* have not yet responded to the complaint; their deadline to do so is
26 April 24, 2019. *See Champion* Dkt. #24. The initial CMC is April 16, 2019. *See id.* Dkt. #27.

27 ² Those actions include: *Randolph v. NEA Delivery, LLC, Amazon.com, LLC*, San Diego County
28 Superior Court Case No. 37-2017-0011798; *Thomas v. NEA Delivery, LLC, Avitus, Inc.*, Alameda
County Superior Court Case No. RG17855208. Fahy Decl., ¶ 3.

1 **II. THE SUBSEQUENTLY-FILED CHAMPION ACTION IS RELATED TO THE**
2 **FIRST-FILED MILLER ACTION PENDING BEFORE JUDGE CHESNEY**

3 Under the Local Rules, cases are “related” when “(1) [t]he actions concern substantially
4 the same parties, property, transaction or event; and (2) [i]t appears likely that there will be an
5 unduly burdensome duplication of labor and expense or conflicting results if the cases are
6 conducted before different Judges.” L.R. 3-12(a). Here, based on recent discussions concerning
7 the class definition, it is now clear that *Champion* is related to the first-filed *Miller* action because
8 the cases involve substantially the same parties, and arise from the same transactions or events.
9 In light of the fact that Judge Chesney has already expended time and effort on law and motion
10 matters in *Miller* that will also be raised in *Champion*, and to prevent future duplication of court
11 resources and the potential risk of conflicting results, these cases should be related.

12 **A. The Two Cases Concern Substantially the Same Parties, Property,**
13 **Transactions, or Events.**

14 As required by Civ. L.R. 3-12(b)(1), the *Champion* and *Miller* actions concern
15 substantially the same parties, property, transactions or event. First, the parties are substantially
16 the same. As clarified by Plaintiff’s counsel, the alleged putative California classes in both the
17 *Champion* and *Miller* actions cover substantially the same California delivery drivers. While
18 employees of NEA were excluded from the class definition in the TAC in *Miller*, Miller’s counsel
19 has stated an intent to include them in the Fourth Amended Complaint, the class definitions in any
20 event substantially overlap because both actions seek to encompass all, or nearly all, employees
21 of all DSPs in California. Also, the named Defendant in both actions is Amazon.com, LLC.

22 Second, both actions involve substantially the same “transactions or event” as they both
23 allege liability against Amazon based on a joint employment theory for claims that arise from
24 alleged violations of California wage and hour laws where third-party DSPs employed California-
25 based delivery drivers to deliver Amazon packages. The *Miller* TAC defines the putative class as
26 individuals who were “initially hired by...staffing agencies” that deliver packages for Amazon,
27 and Miller alleged that Amazon jointly employed those individuals. *Miller* TAC, ¶¶ 2, 18, 19.
28 Likewise, Plaintiff *Champion*’s putative class includes “[a]ll persons [in California] hired directly

1 by Amazon and/or any staffing agencies,” (*Champion* Complaint, ¶ 13), and *Champion* alleges
2 that Amazon jointly employed all DSP employees. *See id.*, ¶¶ 21-32. Thus, both actions pursue
3 the unique class definition where delivery drivers of numerous DSPs are sought to be included in
4 the same class based on the fact that Amazon was a customer for whom deliveries were made.
5 This theory, and joint employer allegations, are the basis for all of the causes of action alleged
6 against Amazon in the two substantially similar actions. This Court has already addressed this
7 theory at the pleading stage in its Order concerning the *Miller* TAC. *Miller* Dkt. # 64. The class
8 allegations in *Champion* raise the same issues this Court has addressed in *Miller*.

9 Finally, both actions allege violations of Labor Code §§ 203, 218.6, 226, 226.7, 510, 512,
10 1194, 1194.2, 1197, and 1198 as to California delivery drivers. They should be related.

11 **B. Conducting the *Champion* Action before a Different Judge Will Result in a**
12 **Duplication of Court Resources and Risk Conflicting Results.**

13 There will be an unduly burdensome duplication of judicial resources, and potentially
14 conflicting results, if *Champion* is conducted before any judge other than Judge Chesney. In
15 *Miller*, Judge Chesney has already expended substantial time considering and ruling on motions
16 relating to the issues posed by the unique class allegations and theories present in both *Champion*
17 and *Miller* that seek to represent a state-wide California driver class comprised of the employees
18 of largely unnamed third-party DSPs. Substantially, the same motions that Amazon filed in
19 *Miller*, and that this Court has already ruled on, will be filed in *Champion*. If Amazon’s motions
20 are considered and decided by another judge, that judge necessarily will duplicate efforts to
21 address the same legal issues previously addressed by Judge Chesney. Moreover, there is a risk
22 as to conflicting results, as to not only initial motions directed at the pleadings, including the class
23 definition, but also subsequent rulings. Given their similarity, both actions will require
24 substantial duplication of effort and risk inconsistent results in the future if they are not related.

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1 **III. CONCLUSION**

2 Amazon hereby respectfully requests that the Court relate the *Champion v. Amazon.com,*
3 *Inc. et al.*, Case No. 3:18-cv-05222-EMC matter to the above-captioned *Miller* matter.

4 Dated: April 12, 2019

MORGAN, LEWIS & BOCKIUS LLP

6 By /s/ Brian D. Fahy

7 John S. Battenfeld
8 Max Fischer
9 Brian D. Fahy
10 Amy A. McGeever

11 Attorneys for Defendant
12 AMAZON LOGISTICS, INC., incorrectly
13 sued as AMAZON.COM, LLC
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[PROPOSED] ORDER

Based on Amazon’s Motion for Administrative Relief to Consider Whether Cases Should be Related, as the Judge assigned to Case No. 3:17-cv-03488-MMC, *Miller v. Amazon.com LLC*, I find that the more recently filed Case No. 3:18-cv-05222-EMC, *Champion v. Amazon.com LLC*, is related to *Miller* case and thus, the *Champion* case shall be reassigned to me.

IT IS SO ORDERED.

Dated: _____

By: _____
HON. MAXINE M. CHESNEY
UNITED STATES SENIOR DISTRICT JUDGE